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EXAMINER

SHAPIRO, JEFFERY A

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Paper No. 20040531

Application Number: 09/543,164
Filing Date: April 05, 2000
Appellant(s): BILLINGTON ET AL.

MAILED

JUN 04 2004

GROUP 3600

Samuel Borodach
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 3/8/04.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

The brief does not contain a statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief. Therefore, it is presumed that there are none. The Board, however, may exercise its discretion to require an explicit statement as to the existence of any related appeals and interferences.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is incorrect. A correct statement of the status of the claims is as follows:

Applicant's recitation of the status of the claim is substantially correct except for the following.

Claims 8, 20, 25, 27 and 29 stand rejected as unpatentable under 35 U.S.C. Sec. 103 over Tedesco et al (US 6,085,888).

Claims 8, 20, 25, 27 and 29 stand rejected as unpatentable under 35 U.S.C. Sec. 103 over Ramsey et al (US 6,055,521).

The provisional double patenting rejection of Claims 8, 13, 20, 25 and 27-32 in view of Claims 1-15 of Application 09/528,255 has been rescinded as the abandonment of this application renders this issue moot.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

The summary of invention contained in the brief is correct.

(5) Summary of Invention

The summary of invention contained in the brief is correct.

(6) Issues

The appellant's statement of the issues in the brief is substantially correct. The changes are as follows:

Issue 2 concerns whether Claims 8, 20, 25, 27 and 29 are properly rejected as unpatentable under 35 U.S.C. Sec. 103 over Tedesco et al (US 6,085,888).

Issue 3 concerns whether Claims 8, 20, 25, 27 and 29 are properly rejected as unpatentable under 35 U.S.C. Sec. 103 over Ramsey et al (US 6,055,521).

Issue 5, regarding the double patenting rejection over the '255 application, has been rescinded as the abandonment of this application renders this issue moot.

(7) Grouping of Claims

Appellant's brief includes a statement that claims 8, 13, 20, 25 and 27-32 do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

Note again that grouping of the claims with respect to issue 5 is moot.

(8) Claims Appealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

5,566,807	Morun	10-1996
6,085,888	Tedesco	7-2000
6,055,521	Ramsey et al	4-2000
6,119,099	Walker et al	9-2000
5,987,439	Gustin et al	11-1999

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 8, 13, 20, 25 and 27-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Morun (US 5,566,807). Morun discloses the vending machine as follows.

As described in Claims 8, 20 and 29;

1. a vending machine (1) *operable* to accept payments in units of different denominations, to perform vends, and to dispense change corresponding to the difference between payments and vend prices;

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2. a vending machine further *operable* in response to determining that insufficient change is available (see figure 8, element 900), either (i) to dispense a lesser amount of change or (ii) to inhibit a requested vend (see figure 9, element 1002) , depending on whether the difference between the available change and the correct change is equal to or less than a predetermined allowable overpay amount (see figure 7),

3. the vending machine has means permitting alteration of a stored parameter defining the predetermined allowable overpay amount (see figure 5, elements (420 and 430));

As described in Claims 8, 20, 25, 27 and 29;

4. the vending machine is operable to provide a warning indication prior to initiation of a transaction if the available change meets a predetermined criterion (95) (see also col. 11, lines 3-24);

As described in Claim 29;

5. the warning indication is provided only if the allowable overpay amount is non-zero (note that the warning indication as described in col. 11, lines 3-24 will not be provided where the customer submits an amount that is the price of the item desired).

As described in Claim 30;

6. said predetermined criterion is met when the available change is less than the value of the lowest denomination non-refundable payment unit (see figure 8);

As described in Claim 31;

7. said vending machine is operable to provide an "exact change" indication to a customer when a requested vend is inhibited (again, note display (95), thereby providing ability and capability to display such information);

As described in Claims 28 and 32;

8. the machine is operable, when inhibiting a vend, to permit the customer to request a vend at a different price (note that the customer is capable of requesting a vend at a different price when the machine becomes disabled (1106)).

As described in Claim 13;

10. the circumstances giving rise to the second indication also cause the deposited monetary unit to be refunded (see figures 10a and 10b);

At the time of the invention, it would have been obvious to one of ordinary skill in the art to use the display means provided by Morun to display such information as required before and after a transaction, since that is what the display is used for. Further, one ordinarily skilled in the art would find it obvious to make information available to a customer through said display that would aid a customer in making a vend.

Therefore, it would have been obvious to one of ordinary skill in the art to have used the system of Morun in order to obtain the invention as described in Claims 8, 13, 20, 25 and 27-32.

3. Claims 8, 20, 25, 27 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tedesco et al (US 6,085,888). Tedesco et al discloses the vending machine as follows.

As described in Claims 8, 20, and 29;

1. a vending machine (100) operable to accept payments in units of different denominations, to perform vends, and to dispense change corresponding to the difference between payments and vend prices;
 2. a vending machine further operable in response to determining that insufficient change is available (see figure 8a, element 820), either (i) to dispense a lesser amount of change or (ii) to inhibit a requested vend (see figure 8a, element 822) , depending on whether the difference between the available change and the correct change is equal to or less than a predetermined allowable overpay amount; (Note that the amount of overpay can be reasonably construed as being that amount in excess of the amount needed to purchase an item, and that said price of said item can be reasonably construed as being a predetermined amount.
- Therefore, any amount above the item price is predetermined to be an overpay.)

3. the vending machine has means permitting alteration of a stored parameter defining the predetermined allowable overpay amount (see figure 1b, noting processor (144) which necessarily allows input and storage of item prices);

As described in Claims 8, 20, 25, 27 and 29;

4. the vending machine is operable to provide a warning indication prior to initiation of a transaction if the available change meets a predetermined criterion (see figure 8a, elements (820 and 822));

At the time of the invention, it would have been obvious to one of ordinary skill in the art that any amount above the item price is predetermined to be an overpay amount.

The amount of overpay can be reasonably construed as being that amount in excess of the amount needed to purchase an item, and that said price of said item can be reasonably construed as being a predetermined amount. Therefore, any amount above the item price is predetermined to be an overpay.

Therefore, it would have been obvious to one of ordinary skill in the art to have used the system of Tedesco in order to obtain the invention as described in Claims 8, 20, 25, 27 and 29.

4. Claims 8, 20, 25, 27 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ramsey et al (US 6,055,521). Ramsey et al discloses the vending machine as follows.

As described in Claims 8, 20 and 29;

1. a vending machine (35) operable to accept payments in units of different denominations, to perform vends, and to dispense change corresponding to the difference between payments and vend prices;
2. a vending machine further operable in response to determining that insufficient change is available (see figures 5, 15a and 15b), either (i) to dispense a lesser amount of change or (ii) to inhibit a requested vend, depending on whether the difference between the available change and the correct change is equal to or less than a predetermined allowable overpay amount; (Note that the amount of overpay can be reasonably construed as being that amount in excess of the amount needed to purchase an item, and that said price of said item can be reasonably construed as being a predetermined amount. Therefore, any amount above the item price is predetermined to be an overpay.)
3. the vending machine has means permitting alteration of a stored parameter defining the predetermined allowable overpay amount (note that PC (27) necessarily allows input and storage of item prices);

As described in Claims 8, 20, 25, 27 and 29;

4. the vending machine is operable to provide a warning indication prior to initiation of a transaction if the available change meets a predetermined criterion (see figures 5, 15a and 15b);

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At the time of the invention, it would have been obvious to one of ordinary skill in the art that any amount above the item price is predetermined to be an overpay amount.

The amount of overpay can be reasonably construed as being that amount in excess of the amount needed to purchase an item, and that said price of said item can be reasonably construed as being a predetermined amount. Therefore, any amount above the item price is predetermined to be an overpay.

Therefore, it would have been obvious to one of ordinary skill in the art to have used the system of Ramsay in order to obtain the invention as described in Claims 8, 20, 25, 27 and 29.

5. Claims 8, 13, 20, 25 and 27-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walker et al (US 6,119,099). Walker et al discloses the vending machine as follows.

As described in Claims 8, 13, 20, 25 and 27-32;

1. a vending machine (10) (see col. 3, lines 62 and 63) *operable* to accept payments in units of different denominations, to perform vends, and to dispense change corresponding to the difference between payments and vend prices (note that vending machines are well-known to be able to perform such functions—see also col. 5, lines 35-46 and col. 6, lines 14-30);
2. a vending machine further *operable* in response to determining that insufficient change is available, either (i) to dispense a lesser amount of

change or (ii) to inhibit a requested vend (see col. 6, lines 31-44) ,
depending on whether the difference between the available change and
the correct change is equal to or less than a predetermined allowable
overpay amount (see col. 6, lines 45-65),

3. the vending machine has means permitting alteration of a stored
parameter defining the predetermined allowable overpay amount (see
figure 1a, noting input device (14) and upsell database (30));

At the time of the invention, it would have been obvious to one of ordinary skill in
the art to use the display means provided by Walker to display such information as
required before and after a transaction, since that is what the display is used for.
Further, one ordinarily skilled in the art would find it obvious to make information
available to a customer through said display that would aid a customer in making a
vend.

Therefore, it would have been obvious to one of ordinary skill in the art to have
used the system of Walker in order to obtain the invention as described in Claims 8, 13,
20, 25 and 27-32.

(11) Response to Argument

Applicant's arguments filed 3/10/04 have been fully considered but they are not
persuasive. Regarding Independent Claims 8, 16, 17, 20, 25 and 29, Morun discloses a
display (95) which is capable of being used for displaying information. Morun also

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discloses dispensing a lesser amount of change (see element 1004 in figure 9, for example), or inhibiting a vend (see elements 1001 and 1002 of figure 9). At the very least, it would have been obvious for one ordinarily skilled in the art to use the display means provided by Morun to display such information as it would be expected that in order for the system of Morun to work, it is necessarily so that information would have to be displayed before and after a transaction. For example, note Morun abstract, lines 7-11, col. 2, lines 9-32, col. 9, lines 58-67 and col. 12, lines 16-19. In addition, note Gustin et al (US 5,987,439), figure 20H, for example, which indicates determination of a transaction amount, comparing this amount to credit available in an account or by cash, and indicating a similar process as Applicant's. Note also, Gustin et al, figure 21F, for example, indicating the transaction price and amount inserted into the machine. This screen could be construed as a warning to a customer that less than the transaction amount has been deposited. See also figure 16a, elements 522, 528 and 536 may also be construed as warnings that are used before, during and after a transaction has been made. Note that figure 17 discloses elements (572, 576, 578, 580, and 586 which may all be construed as warnings or indications to the customer during the transaction process, where he is given the ability to change an amount of cash to receive. Further regarding Claim 20, note that it would again be expedient for one ordinarily skilled in the art to allow a customer to choose another product based upon the information necessarily required for the process of Morun to work, since it can be envisioned that a customer, instead of paying a certain amount over a particular price for a particular product, might choose another product not requiring an overpay amount. Regarding

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Claim 25, it would also be obvious to one ordinarily skilled in the art to provide an overpay amount which would be in response to one particular coin, since, for example, the one dollar US coin has been used in vending machines. At the very least, as inflation over time causes prices to rise, it would be envisioned that a vending machine would have to accept one dollar coins in order to be more efficient to a customer attempting to purchase higher-priced items.

Applicant asserts that a display means arranged to give first and second indications that insufficient change may be available to a customer is not obvious over Morun, for example. However, it is noted that a "change empty" or "bills only" LED display message is routinely found on vending machines. Note also Walker, cited above, which has an elaborate scheme of warnings and identifications which appear to match Applicants' limitations found in the independent claims. It is noted that the prior art cited above, Morun and Walker et al in particular, appear to read on the independent claims, as currently written and reasonably broadly construed, as described above.

Applicant asserts that all of the claims are allowable over the prior art. As an example, Claim 20, one of the broadest independent claims will now be discussed in further detail.

Claims 20 recites as follows.

A vending machine which has a display means and which is operable, in response to selection of a product for vending, to compare the difference between the value of deposited money and the product price with the available change, and to inhibit

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the vend if that difference exceeds a predetermined allowable overpay amount, the machine being operable in these circumstances also to cause the display means to provide an indication that insufficient change may be available from the machine and to allow selection of a product of different price.

Morun (display (95)), Tedesco (124), Ramsey (57) and Walker (18) all disclose a display means. These displays are operable to perform several functions for the vending machine, such as communicating a change deposited from a customer to the machine, for example. Vending machines in all of these systems, operates in response to a selection of a product which the customer wants. This is how vending machines work. They all compare the difference in value of the deposited money with the product price and the available change. See prior citations of the art above. The vend is then "inhibited" if that difference exceeds a predetermined amount. This amount is defined as "an allowable overpay amount." Under a reasonable interpretation of an overpay amount, one could construe this as the amount over the regular price one is willing or allowed to pay. Morun specifically discloses calculation of an overpay amount in fig. 7 and col. 9, lines 35-55.

Tedesco simply discloses that if the amount is over a certain amount, (see figure 8a), the program continues on. It would be reasonable for one ordinarily skilled in the art to realize that as in (814) and (822), information regarding the transaction can be displayed by the system. A change dispenser (118) is illustrated at figure 1b. Insufficient change indication is considered to be a well-known function provided for in

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various vending machines. It appears that it would have been obvious for one ordinarily skilled in the art to have provided a warning that insufficient change was provided for a vend. Again, this is suggested by the change dispenser and the display provided by the system. Selection of different products is suggested by Tedesco at figure 3a.

Ramsey's system includes a foreign exchange routine, at figure 16. Such foreign exchanges often round up to a slight amount higher or lower than the amount tendered in the original currency. Such an amount over the original currency amount might be construed as an "overpay amount." Ramsey also illustrates return of change due at figure 5, elements (47, 49).

Walker, as described above, includes a rounded up price which is offered to the customer. This may be construed as an "overpay amount" as well.

Applicant appears to argue claim limitations that are narrower than their plain meaning appears to allow. Nowhere, for example, is there a limitation in Claim 20, which causes one to construe "overpay amount" except in its broadest reasonable interpretation. This is true of Applicant's assertions regarding the other claims as well.

Essentially, Applicant's claims describe a vending machine which allows a customer to deposit change for an item the vending machine provides, and in the situation when change would normally be due the customer, an option is given to abort the vend or buy the intended item at an increased price. As an example of the prior art, Walker discloses this system, as described above. Applicant's again assert that Walker has no suggestion to display information or information regarding an overpay amount. However, as with the other prior art cited, Walker discloses a display (18) which

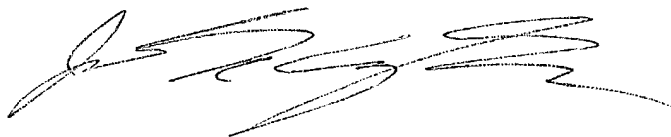
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displays information concerning the transaction of a customer. Figure 2 of Walker, for example, indicates a rounded price which is generated and offered to the customer as an amount above the original price and item desired. The upsell price is offered on the occasion of change being due to a customer, which can be construed as an overpay amount. This appears to be substantially the same as Applicant's claim limitations call for. At the very least, "insufficient change" would be obvious to indicate to a customer, otherwise, there would be no way to provide an "upsell." Applicant spuriously argues in the brief at p. 14, lines 8 and 9, that Walker does not suggest "inhibiting a vend as recited in Claim 20." Again, Walker inhibits the vend, since it is not permitting the customer to obtain his change and walk away without the upsell being presented.

For the above reasons, it is believed that the rejections should be sustained.

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Respectfully submitted,



Jeffrey A. Shapiro
Examiner
Art Unit 3653

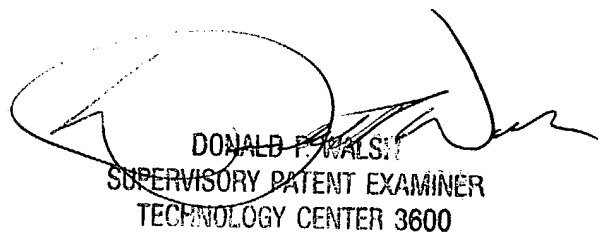
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